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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,101	03/13/2000	Andrew Roy Buchman	EX00-015	6972

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EXAMINER

GOLDBERG, JEANINE ANNE

ART UNIT

PAPER NUMBER

1634

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/524,101

Applicant(s)

BUCHMAN ET AL.

Examiner

Jeanine A Goldberg

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 2-4, 7 and 11-13.

Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*J. Goldberg*

Continuation of 2. NOTE: The newly added claims include the recitation "as set forth in" which is indefinite because it is unclear whether the claim requires the entire SEQ ID NO, or whether smaller fragments are encompassed by the claims. In the event that smaller fragments are claimed, the claim would be rejectable with art. Moreover, the search would be a new search and new considerations. .

Continuation of 5. does NOT place the application in condition for allowance because: With respect to the Restriction requirement, the response is correct in stating that Claim 4 is generic, however, Claim 4 has not been found allowable. In the event that claims drawn to "an isolated nucleic acid comprising SEQ ID NO: 1" and "an isolated nucleic acid encoding SEQ ID NO: 2" are allowable, as indicated by the Final office Action, no generic claim will exist and no further search will be performed. This is not contrary to the original restriction or the MPEP. No generic claim would have been found allowable.

With respect to the Description Rejection: The examiner acknowledges the presence of multiple p53 sequences within the specification, however, each of these sequences are not encompassed by a polypeptide comprising SEQ ID NO: 28 or 32. Specifically, the specification teaches, at page 14, "Interestingly, the insect p53s also have distinct differences from the Human, Xenopus, and squid p53s. Specifically, insect p53s contain a unique amino acid sequence within the DNA recognition domain that has the following sequence: (R or K)(I or V)C(S or TICPKRD. Specifically, amino acid residues 259 to 267 of DMp53 have the sequence: KICTCPKRD; residues 249 to 257 of CPBp53 have the sequence: RICSCP KRD; and residues 245-253 of TRIB-Ap53 have the sequence RVCSCP KRD. This is in distinct contrast to the Human, Xenopus, and squid p53s which have the following corresponding sequence: R (I or VICACPKRD. Another region of insect p53s that distinctly differs from previously identified p53s lies in the zinc coordination region of the DNA binding domain. The following sequence is conserved within the insect p53s: FXCIK or QINSC (where X = any amino acid. Specifically, residues 225-231 of bMp53 have the sequence: FVCQNSC; residues 211-217 of CPBp53 and residues 208-214 of TRIB-Ap53 have the sequence FVUKNSC; and the corresponding residues in Helio-p53, as shown in Figure 1, have the Sequence: FSCKNSC. In contrast, the corresponding sequence in Human and Xenopus 1753 is YMCNSSC, and in squid it is FMCLGSC."

This passage in the specification illustrates that not each of the insect p53 sequences comprise the claimed sequence of SEQ ID NO: 28 and 32. Thus, the instant claimed "domain" is not representative of all of the sequences provided in the instant specification, as the response appears to be arguing. The specification has described only the DMp53 nucleic acid which comprises the domain. Based upon the assertions in the response, the response appears to believe that the claim would encompass additional species, however, based upon a single species, the instant specification has not described a representative number of species broadly describe the genus. The rejection also points out that the claim encompasses genomic p53, mutants, variants, homologs including possible other insects and splice variants which have not been described. The rejection balances and weighs all of the factors and determines that written description is not met.

  
BJ FORMAN, PH.D.  
PRIMARY EXAMINER